Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1980

No. 79-1408

MAYOR OF CITY OF PHILADELPHIA,
CITY COUNCIL OF PHILADELPHIA, and
LEON SOFFER, PH.D.,
Petitioners

v.

TERRI LEE HALDERMAN, et al.,
PENNSYLVANIA ASSOCIATION FOR
RETARDED CITIZENS, et al., and
UNITED STATES OF AMERICA,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioners, Mayor of City of Philadelphia, City Council of Philadelphia, and Leon Soffer, Ph.D., respectfully pray that a Writ of Certiorari issue to review an

Opinion and Order of the United States Court of Appeals for the Third Circuit entered in this matter on December 13, 1979.

OPINION BELOW

The opinion and order of the Court of Appeals for the Third Circuit and the order of the United States District Court for the Eastern District of Pennsylvania appear in the Appendix hereto.

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals misconstrued the Developmentally Disabled Assistance and Bill of Rights Act, a purely funding measure, in ruling that the Philadelphia County Defendants had violated its provisions despite the fact that they received no funds pursuant to the statute?

2. Whether the Court of Appeals erred in affirming the order of the District Court enjoining the Philadelphia County Defendants to provide community living arrangements to the plaintiff class without setting forth as a condition precedent the provision of adequate funding by the Commonwealth as required by state law?

3. Whether the Court of Appeals violated the principles of federalism in its extensive grant of power to the District Court and its Master over the mental retardation program in Philadelphia?

STATUTORY PROVISIONS INVOLVED

Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6001, *et seq.*

Mental Health and Mental Retardation Act of 1966, 50 Purdon's Statutes §4101, *et seq.*

Act 256 of the 1970 Pennsylvania General Assembly, November 27, 1970.

The texts of the pertinent sections of these provisions are set forth in the Appendix hereto.

STATEMENT OF THE CASE

This action was commenced in the United States District Court for the Eastern District of Pennsylvania by the filing of a complaint on or about May 30, 1974, on behalf of Terri Lee Halderman, a retarded person, by her mother and guardian, Winifred Halderman, others similarly situated, and the Parents and Family Association of Pennhurst, as a class action against the Pennhurst State School and Hospital, the Pennsylvania Department of Public Welfare, and certain officials and staff of the Commonwealth of Pennsylvania. On or about July 29, 1974, the Halderman Plaintiffs filed an Amended Complaint. The Halderman Plaintiffs alleged that the conditions at Pennhurst violated several constitutional and statutory provisions. The United States joined the Halderman Plaintiffs on or about November 18, 1974, by repeating the earlier allegations against Pennhurst.

On or about June 3, 1975, the Pennsylvania Association for Retarded Citizens (hereinafter referred to as "PARC") and certain retarded persons, by their parents or next friends, moved to intervene. PARC filed an Amended Complaint in Intervention on or about January 8, 1976, which, for the first time, added as defendants the Mayor of the City of Philadelphia, the City Council of Philadelphia, and Leon Soffer, Ph.D., Mental Health/Mental Retardation Administrator for Philadelphia

County, along with other defendants from Bucks, Chester, Delaware and Montgomery Counties. PARC's constitutional claims included the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States. They also claimed violations of the Rehabilitation Act of 1973 (29 USC §794), 42 USC §§1983, 1986, 1988 and 6010 as well as the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 Purdon's Statutes §4101, et seq. The District Court's jurisdiction was based on 28 U.S.C. §1331 and 1343.

The case went to trial before the District Court sitting without a jury on April 18, 1977, and concluded on June 13, 1977. On December 23, 1977, the Court issued its Opinion finding that the defendants had violated the rights of the plaintiffs under the Rehabilitation Act of 1973, the MH/MR Act of 1966, and the Constitution.

On March 17, 1978, the District Court permanently enjoined the Philadelphia County Defendants, along with the Commonwealth and Suburban County Defendants, to replace Pennhurst State School and Hospital by providing community living arrangements for all those presently residing at Pennhurst and all those on its waiting list, together with community services necessary to provide "minimally adequate habilitation." The District Court further enjoined the Philadelphia County Defendants to develop and provide members of the plaintiff class a written individualized program plan; to provide to each an individualized habilitation program; to provide annual periodic review thereof, and the opportunity to be heard thereon; to provide "all necessary and proper" monitoring mechanisms to assure that community living arrangements and other community services provided are of the necessary quantity and quality; to implement with dispatch Act 256 of the 1970 Pennsylvania General Assembly (providing for the creation and renovation by the Pennsylvania Department of General Services of buildings for supportive services for the men-

tally retarded); and to cease from advancing in any manner applications of mentally retarded individuals for placement at Pennhurst. The court further ordered that a "Special Master" be appointed. Among his duties were determination of the nature and extent of required community services and monitoring systems; and planning the interim operation and closing of Pennhurst.

Philadelphia County Defendants timely filed a notice of appeal from the above order, and the matter was argued before a panel of the Court of Appeals on January 9, 1979. Re-argument before the Court of Appeals en banc took place on September 6, 1979.

On December 13, 1979, the Court of Appeals rendered its decision in this matter, and affirmed the judgment and order of the trial court with certain limited exceptions. The Court of Appeals held that the Developmentally Disabled Assistance and Bill of Rights Act, as well as the MH/MR Act of 1966, imposes a duty upon the Philadelphia County Defendants, as well as the Commonwealth and Suburban County Defendants, to provide mentally retarded citizens with treatment or habilitation in the least restrictive environment.

REASONS FOR GRANTING THE WRIT

The Court of Appeals misconstrued the Developmentally Disabled Assistance and Bill of Rights Act, a purely funding measure, in ruling that the Philadelphia County Defendants have violated its provisions despite the fact that they received no funds pursuant to the statute.

In passing the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6001, et seq., (D.D. Act) the Congress provided for grants-in-aid to the states for construction of new programs for the mentally retarded. The D.D. Act sets forth a scheme so that in order for

> ". . . a state to receive federal funds for construction of new facilities and provision of new services for the mentally retarded, it must agree to abide by qualitative standards for habilitative care prescribed in regulations promulgated by the Secretary of Health, Education and Welfare. 42 U.S.C. §6008, 6063. A state's funds may be discontinued . . . if the Secretary finds that the standards prescribed by the regulations are no longer being met. 42 U.S.C. §6064. Thus, Congress has devised what it hopes will be an effective carrot-and-stick method of improving the lot of the mentally retarded in America." *United States v. Solomon*, 419 F. Supp. 358, 370 (1976); affirmed 563 F. 2d 1121 (4th Cir., 1977).

This statute is, therefore, strictly a funding statute. Thus, failure to abide by its strictures is not to have acted illegally, but simply to have placed the recipient in a position in which it is forced to forego federal funding.

This view of the D.D. Act is also shared by the United States Court of Appeals for the Ninth Circuit. In *United States v. Mattson*, the Ninth Circuit stated:

> ". . . the provisions (of the D.D. Act) themselves provide that the only power wielded by the Federal government is the threat of withholding funds should

the states not comply with all procedural requirements. 42 U.S.C. §6065." 600 F. 2d 1295 at 1299 (1979).

No evidence was presented at trial that the Philadelphia County Defendants received any funds under the D.D. Act. For this reason alone, the Philadelphia County Defendants cannot be held to have violated any duty owed Pennhurst residents under the D.D. Act.

Nor was any evidence presented at trial that Pennhurst received any funding under the D.D. Act. However, even if the Commonwealth Defendants accepted such funds for use at Pennhurst, then any violation of the provisions of the statute would have been committed by the Commonwealth Defendants alone. A breach on the part of the Commonwealth does not create a duty on the part of the Philadelphia County Defendants to remedy that breach. Therefore, the Court of Appeals erred in ruling that the Philadelphia Defendants violated their duty to Pennhurst residents under the D.D. Act.

II. The Court of Appeals erred in affirming the order of the District Court enjoining the Philadelphia County Defendants to provide community living arrangements to the plaintiff class without setting forth as a condition precedent the provision of adequate funding by the Commonwealth as required by state law.

The Court of Appeals declared that the MH/MR Act of 1966, 50 Purdon's Statutes §4201, created a state statutory right to adequate habilitation (Opinion, pp. 32, 39). The Court of Appeals held that the Philadelphia County Defendants violated this state statutory duty to provide habilitation to the residents of Pennhurst; and on that basis affirmed the order of the District Court permanently enjoining the Philadelphia County Defendants to provide suitable community living arrange-

ments for members of the plaintiff class. (Opinion, pp. 37-39). This holding and order is insupportable.

Among the primary functions of the MH/MR Act of 1966 is the delineation of responsibilities between the Commonwealth and the Counties. Article II of the Act, 50 P.S. §4201 et. seq., sets forth the "Responsibilities of the State." Section 4201 states:

> "The department [of Public Welfare] shall have power, and its duty shall be:
>
> (1) to assure within the State the availability and equitable provision of adequate mental health and mental retardation services for all persons who need them, regardless of religion, race, color, national origin, settlement, residence, or economic or social status. . . ."

The "Responsibilities of Counties" are set forth in Article III of the Act, 50 P.S. §4301, et seq. Section 4301(d) sets forth the nine services which the counties are required to provide. Among these nine services are neither community living arrangement nor institutional services.

As the Pennsylvania Commonwealth Court noted in *Hoolick v. Retreat State Hospital:*

> "The State, through the Department of Welfare, is responsible for the overall supervision and control of the program to assure the availability of and equitable provision for adequate mental health and mental retardation facilities; and the counties, separately or in concert, are assigned responsibilities *as to particular programs.*" (emphasis added) 24 Pa. Com. Ct. 218, 222 (1976).

Those "particular programs" are, of course, the nine mandated programs described in §4301(d).

Nevertheless, the Court of Appeals concluded that the Counties, as well as the Commonwealth, violated their statutory duty to provide adequate habilitation to

the retarded residents at Pennhurst. With regard to the Commonwealth, the Court referred to the earlier noted 50 P.S. §4201. As to the counties, the Court referred only to 50 P.S. §4301(a) wherein it is set forth, in general terms, that the counties shall "establish a mental health and mental retardation program." Upon the basis of this section, the Court stated:

> "Thus, although section 4301(d) specifies certain facilities for which Counties will be principally responsible, the Act as a whole contemplates County participation in all facets of the state's provisions of services." (Opinion, p. 39).

This view is without basis in the law. Section 4301(a) is simply a general provision directing creation of the county MH/MR program. Section 4301(d) follows logically from 4301(a) in that it provides specificity with respect to what county program responsibilities will entail. See *Hoolick*, supra. With regard to facilities such as Pennhurst, the Act of 1966 is clear. Section 4202(a) states: "The department (of Public Welfare) shall operate all State facilities and shall assign such functions to each as the secretary shall prescribe." (See also Section 4201(4)). Undoubtedly, then, the County responsibilities are limited to the nine mandated programs of §4301(d); and the responsibility for Pennhurst rests with the State. No evidence was presented at trial that the Philadelphia County Defendants failed to provide any of the nine services listed in Section 4301(d).

Assuming *arguendo* that community living arrangement services are listed among the nine mandated of Section 4301(d), the obligation of the county to provide these services is subject to the provisions of Title 50 P.S. §4509(5). Section 4509, entitled "State Grants and Payments", sets forth the duty of the Pennsylvania Department of Public Welfare to fund the counties' programs. Subsection (5) provides that if the Pennsylvania Legislature fails to appropriate sufficient funds, then the finan-

cial obligations of the counties are accordingly reduced ". . . and the counties shall be required to provide only those services for which sufficient funds are available."

Furthermore, Title 50 P.S. §4507(2) requires the Commonwealth to pay for all obligations "as may arise under any new program established by the department [of Public Welfare]". The Pennsylvania Department of Public Welfare established the community living arrangements program in 1972. As this program was begun some six years after the enactment of the MH/MR Act of 1966, it is undoubtedly such a "new" program for which the Commonwealth is fully responsible. Moreover, Pennsylvania DPW itself has recognized its 100% responsibility for this program in its legally promulgated regulations. See Section 6111, Pa. DPW Regulations. Therefore, it is clear that the Court of Appeals erred in affirming the order of the District Court enjoining the Philadelphia County Defendants to provide community living arrangements to the plaintiff class without setting forth as a condition precedent the provision of adequate funding by the Commonwealth.

III. The Court of Appeals violated the principles of federalism in its extensive grant of power to the District Court and its Master over the mental retardation program in Philadelphia.

The Court of Appeals in its decision affirmed the grant of power made by the District Court to the Office of the Special Master which the lower court created. As the Court of Appeals noted, the Master was given the authority.

> ". . . to prepare and present to the court for its approval various plans for the transfer of Pennhurst residents to CLA's and for the provision of services to the class members 'in the least separate, most integrated, least restrictive community setting'. . . ." (Opinion, p. 55).

These "various plans" include, *inter alia*, the authority to specify the quantity and type of community living arrangements and all other residential program and staffing patterns necessary; to delineate responsibility for their creation, maintenance, and setting deadlines for compliance; to specify resources, procedures, and schedules for individual evaluations and formulation of individual exit and community program plans and for their periodic review; to recruit, hire, and train personnel to carry out these plans; and to plan for the creation and maintenance of a monitoring mechanism to oversee the continued compliance of defendants without time limitation. [District Court Order of March 17, 1978, paragraph 6(a)(1)]. Moreover, the Court of Appeals granted the District Court, or the Master, the authority to determine, on an individual basis, the most appropriate setting for treatment of members of the plaintiff class (Opinion, pp. 62, 64). In sum, the District Court and its Master have been granted almost complete control of the mental retardation program in Philadelphia.

It is the settled rule that the scope of the remedy must be determined by the nature of the violation. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). It has long been held that an injunction is "to be used sparingly, and only in a clear and plain case." *Irwin v. Dixion*, 9 How 10, 33 (13 L. Ed. 25) (1850); quoted in *Rizzo v. Goode*, 423 U.S. 362 (1976). Where plaintiffs seek to enjoin the actions of a state agency, even within the state court system, they must overcome "the well-established rule that Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs." *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961); quoted in *Sampson v. Murray*, 415 U.S. 61 (1974). When such an injunction of the activities of an agency of state or local government is sought in federal courts, great consideration must be given to the principles of federalism in determining the availability and scope of relief. *Rizzo v. Goode*, supra;

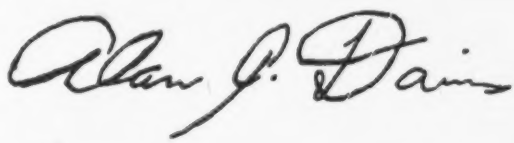
Doran v. Salem Inn, Inc., 422 U.S. 922 (1975). See also *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977). Where the exercise of authority by state and local officials is attacked, federal courts must be constantly mindful of the "special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own law." *Stefanelli v. Minard*, 342 U.S. 117 (1951), quoted in *Rizzo v. Goode*, supra.

The Court of Appeals here has engaged in an unwarranted intrusion into the affairs of the City of Philadelphia in significantly revising the internal procedures and diminishing the authority of its Office of Mental Health and Mental Retardation. The Court of Appeals has, therefore, violated the principles of federalism.

IV. CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and order of the Court of Appeals for the Third Circuit.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 1980, three true and correct copies of the Petition for Writ of Certiorari were served by First Class Mail, Postage Prepaid, to each of the following:

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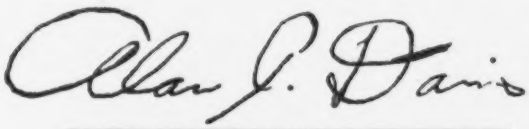
I further certify that all parties required to be served have been served.



Alan J. Davis
City Solicitor

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